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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 9

[Docket ID: FEMA-2015-0006]

RIN 1660-AA85

Updates to Floodplain Management and Protection of Wetlands Regulations to Implement Executive Order 13690 and the Federal Flood Risk Management Standard

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; Notice of Data Availability.

SUMMARY: The Federal Emergency Management Agency (FEMA) is issuing this Notice of Data Availability (NODA) in connection with the proposed rule titled, “Updates to Floodplain Management and Protection of Wetlands Regulations to Implement Executive Order 13690 and the Federal Flood Risk Management Standard” that was published on August 22, 2016. Through this NODA, FEMA is making available to the public, and soliciting comment on, a draft report, 2016 Evaluation of the Benefits of Freeboard for Public and Nonresidential Buildings in Coastal Areas. The draft report has been added to the docket for the proposed rule.

DATES: Comments must be received no later than October 21, 2016. Late comments will not be accepted.

ADDRESSES: You may submit comments, identified by Docket ID: FEMA-2015-0006, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail/Hand Delivery/Courier: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 8NE-1604, 500 C Street, SW., Washington, DC 20472-3100.

To avoid duplication, please use only one of these methods. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. If you submit a comment, identify the agency name and the Docket ID for this rulemaking, indicate the specific section of the document to which each comment applies, and give the reason for each comment.

FOR FURTHER INFORMATION CONTACT: Kristin Fontenot, Director, Office of Environmental Planning and Historic Preservation, Federal Insurance and Mitigation Administration, DHS/FEMA, 400 C Street, SW., Suite 313, Washington, DC 20472-3020. Phone: 202-646-2741; E-mail: Kristin.Fontenot@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: On August 22, 2016, at 81 FR 57402, the Federal Emergency Management Agency (FEMA) proposed to amend its regulations on “Floodplain Management and Protection of Wetlands” and proposed a supplementary policy that would further clarify how FEMA applies the Federal Flood Risk Management Standard. Through this Notice of Data Availability (NODA), FEMA is making available to the public, and soliciting comment on, a draft report, 2016 Evaluation of the Benefits of Freeboard for Public and Nonresidential Buildings in Coastal Areas that became available after publication of the proposed rule.

As part of the rulemaking process, FEMA included in the docket a Regulatory Evaluation to estimate the potential costs and benefits of the proposed rule. The evaluation accompanying the proposed rule addressed costs associated with elevating and floodproofing FEMA Federally Funded Projects to specified freeboard levels. Cost and benefit estimates were made using the 2008 Supplement to the 2006 Evaluation of the National Flood Insurance Program's Building Standards (2008 report), which evaluated the costs and benefits associated with elevating newly constructed residential structures, located in coastal areas.

While the 2008 report was the best available data at the time, it was limited in scope to single-family residential structures. The proposed rule primarily affects non-residential structures owned by local government agencies and private non-profit organizations. The 2008 report is also limited to new construction projects. Most of the projects affected by the proposed rule would be retrofitted structures. The draft report includes data and analysis specific to some of the types of projects most likely to be affected by the proposed rule.

The purpose of this 2016 draft report, which is part of a broader effort related to FEMA's Hazard Mitigation Assistance Program, was to determine if increased freeboard requirements would result in sufficient reductions in damages to be considered cost-effective. The results of this analysis provide some insight into the potential costs and benefits associated with constructing nonresidential and public buildings with higher freeboard requirements. The draft report provides cost and benefit estimates for elevating new construction buildings, as well as the costs and benefits of dry floodproofing both new and existing structures. The Regulatory Evaluation for the proposed rule discussed

the differences in potential costs and benefits associated with elevation and floodproofing of new construction and existing buildings. However, because of a lack of data available to FEMA at the time that FEMA published the Regulatory Evaluation, the Evaluation does not quantify these costs separately. Additionally, the draft report includes significant additional discussion of the effects of sea level rise on the benefit-cost ratios of freeboard elevation. FEMA notes for the public's awareness that similar to the 2008 report, the draft report is limited, as riverine areas were not included in the analysis. Moreover, the report is still in draft form and is not peer-reviewed. FEMA welcomes comments on these and other aspects of the draft report. In particular, FEMA requests comments on whether the draft report contains enough information on which the public can base a conclusion on its use to quantify benefits for the proposed rule. For example, the study describes its methodology, outlines its basic assumptions, and provides summary statistics and overall benefit-cost ratios, but it does not show the inputs used for many of its calculations and assumptions.

Because of the above-referenced differences between the 2008 report and the draft report, FEMA welcomes comment on whether it would be more appropriate to use the draft report to estimate the costs and benefits in a future regulatory evaluation of a final rule on this topic. FEMA seeks comments from the public about all aspects of the applicability of this draft report to the rulemaking, including how the data in this draft report may be applied in estimating costs and benefits associated with elevating and floodproofing structures to the proposed freeboard levels in the final rule.

For example, data and analysis from the draft report could be used to estimate the costs and benefits associated with elevating and floodproofing FEMA Federally Funded

projects involving nonresidential structures. The draft report includes data and analysis relevant to the following building types in coastal areas: elementary schools, hospitals, police stations, retail stores, and office buildings. The analysis suggests that for the above-referenced building types, evaluated costs could range from \$1.03 to \$16.29 per square foot, depending on the type of structure.

In addition, FEMA did not monetize the benefits of the freeboard value approach in the Regulatory Evaluation, but FEMA did provide the cost-benefit ratios that the 2008 study described for various freeboard levels. The draft report includes updated cost-benefit ratios that might more accurately depict the benefits of freeboard levels for different types of non-residential structures in coastal areas. FEMA specifically requests comments from the public about the potential applicability of these cost-benefit ratios and whether and how they should be incorporated into the Regulatory Evaluation of a final rule.

List of Subjects in 44 CFR Part 9

Flood plains and Reporting and recordkeeping requirements.

Authority: E.O. 11988 of May 24, 1977, 3 CFR, 1977 Comp., p. 117; E.O. 11990 of May 24 1977, 3 CFR, 1977 Comp. p. 121; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of March 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148 of July 20, 1979, 44 FR 43239, 3 CFR, 1979 Comp., p. 412, as amended.; E.O. 12127; E.O. 12148; 42 U.S.C. 5201.

Dated: September 14, 2016.

W. Craig Fugate,

Administrator,

Federal Emergency Management Agency.

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